REMARKS

It is believed that the following remarks attend to all rejections presented in the pending October 8, 2003 office action.

Claim Rejections under 35 USC § 103

Claims 1-4 and 6 stand rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 5,838,365 ("Sawasaki"). Respectfully we disagree, since the cited art does not render any of these claims *prima facie* obvious. The following is a quotation from the MPEP setting forth the three basic criteria that must be met to establish a *prima facie* case of obviousness:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP, §2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The current rejection is substantially similar to the last rejection based upon Sawasaki but under 35 U.S.C. §102(b). In this current §103 rejection, Sawasaki is not combined with any other art and, as argued before, Sawasaki still does not teach every element of claims 1-4 and 6 as required under 35 U.S.C. §103 (see above MPEP quotation). The Examiner argues that Sawasaki is "to be employed" to measure airtime. We cannot disagree more, and Sawasaki never hints or teaches such features. Sawasaki discloses a "tracking apparatus for tracking image in local region." It "continuously tracks an arbitrary local region within a search image" (col. 2, lines 36-37). Sawasaki does not therefore teach the elements of Applicants' claim 1. Sawasaki in fact teaches away from the present invention. For example consider Sawasaki, col. 29, lines 46-67 through col. 30, lines 1-65. In this section, Sawasaki discloses detection of an intruder based upon a difference image that is greater than a stored image – but the "peak position" is based on a correlation value between these images; it has nothing to do with finding a physical altitude of a person! Certainly there is no teaching or suggestion of how to obtain an altitude in Sawasaki.

Claim 1 requires the following elements:

(A) viewing the sportsman through a digital camera;

(B) assessing frames of data provided by the digital camera to locate motion within the frames of data; and

(C) determining the peak altitude by comparing the highest point of motion by the sportsman within the frames of data to a reference object.

As we noted, Sawasaki does not disclose these steps. The rather long specification of Sawasaki teaches tracking images within a local region – it does not teach or suggest comparing an image of a moving athlete to a reference object to automatically obtain altitude. Again, Sawasaki's use of "peak" refers to determining "whether or not there exists an intruding object for which the peak value of the correlation value is greater than a threshold value". Sawasaki, col. 39, lines 20-35. This is not equivalent – at all - to determining a peak altitude, as in claim 1.

The Examiner thus argues that Sawasaki "structurally" discloses Applicants' invention. We strongly disagree. There must be some suggestion or teaching of the step of determining peak altitude – and this just does not exist. Sawasaki cannot teach or suggest what isn't disclosed – namely the elements of claim 1. Claims 2-4, 6 depend from claim 1 and benefit from like arguments.

Reconsideration and allowance are again requested for claims 1-4, 6.

Claims 7 and 12 stand rejected as being unpatentable over Sawasaki in view of U.S. Patent No. 6,324,296 ("McSheery"). Respectfully we disagree, since (once again) the cited art does not render claims 7 and 12 *prima facie* obvious. The foregoing arguments against Sawasaki also apply to claims 7 and 12 since they depend from claim 1. In particular, Sawasaki fails to teach the elements of claim 1. McSheery also does not disclose the elements of claim 1. They cannot, therefore, teach the elements of claims 7, 12 (as required under 35 U.S.C. §103, see above quotation). Reconsideration and allowance is thus requested for claims 7, 12.

Claim 8 stands rejected as being unpatentable over U.S. Patent No. 3,710,335 ("Lepley"), under 35 U.S.C. §103. Once again we disagree since the cited art does not render claims 7 and 12 *prima facie* obvious. Claim 8 has the following step elements:

(A) mounting a radio beacon on the sportsman,

(B) monitoring the location of the sportsman through triangulation to determine the location of the sportsman over time, and

(C) determining the airtime from the location over time.

Importantly, Lepley does not teach or suggest "airtime". The Examiner refers to the abstract, but that too has no recitation of "loft" or "airtime" or anything similar. The fact that it is a sportsman is also not disclosed, but that is not as important as the fact that Lepley does not teach or suggest "airtime". Lepley therefore fails under 35 U.S.C. §103, since it does not teach, suggest or otherwise disclose elements of claim 8. Reconsideration and allowance of claim 8 is now requested.

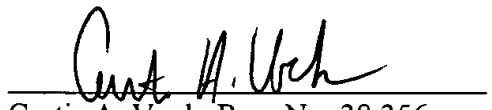
Claim 5 stands rejected under 35 U.S.C. §112. Claim 5 is amended to remove the objected to language. It is noted that claim 5 is only objected to on grounds of 35 U.S.C. §112; since this rejection is now obviated, allowance is now requested of claim 5.

The indication of allowable subject matter in claims 9-11 is appreciated.

For the reasons stated above, Applicants argue that claims 1-12 are allowable over the art of record. Applicants request an opportunity to interview this case in the event any claims are further rejected so that these issues may be better framed prior to another appeal.

It is believed no fees are due. If any additional fee is due, please charge Deposit Account No. 12–0600.

Respectfully submitted,

By: 

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